

BOULDER COUNTY GOVERNMENT STRUCTURE

Prepared by the LWV of Boulder Valley, Colorado,
and
the LWV of Longmont, Colorado
May 1999

Contents

	<i>page</i>
Introduction	2
Powers of Counties in Colorado	3
County Home Rule	5
Pros and Cons of County Home Rule	7
Increasing the Board of County Commissioners from Three to Five	8
Pros and Cons of Increasing the Number of Commissioners to Five	10
Pros and Cons of Electing from Districts	11
Reorganizational Changes Possible Under the Current System	12
Pros and Cons of a County Manager under the Present System	13
Future of County Government	14
The City and County of Broomfield	15

INTRODUCTION

The word "county" has its roots in England where counties were the major subdivisions into which the kingdom was divided. Each of these divisions was under the authority of a count--therefore the word "county"--who owed his allegiance to the king.

Conceptually counties haven't changed very much since then. Political subdivisions of the state, they are created by the legislature and exist to aid in the administration of state law. Although they also provide an important level of local government, it is one which is not locally determined.

According to the National Association of Counties, there are 3068 county governments in the United States. They vary greatly in size and population. The smallest is Arlington County, Virginia (67 square kilometers); the largest, at 227,559 square kilometers, is North Slope Borough in Alaska. The most populous county is Los Angeles County in California, with its more than nine million people. Loving County, Texas, with only 140 residents, is the least populous.

All but two of the 50 states have functioning county governments. Connecticut and Rhode Island are divided geographically into counties, but the counties are not functional units of government. Counties in Alaska are called boroughs; in Louisiana they are parishes.

In the early days of the settling of the western United States, there was little in the way of organized government to settle disputes and to keep order. The miners who flocked to the mountains of Colorado in search of gold filled the void by creating mining districts, which made their own laws and dispensed their own justice. The land where we live now was then partly in Nebraska Territory and partly in Kansas Territory; Baseline Road, which lies on the 40th parallel of latitude, was the dividing line.

When the Territory of Colorado was formally established in 1861, Boulder County was one of the 17 counties created. It remained unchanged when Colorado became a state in 1876, and still retains its original boundaries.

POWERS OF COUNTIES IN COLORADO

The Constitution of the State of Colorado, adopted in 1876, devoted an entire article, Article XIV, to county government. In the intervening years, the powers permitted to county government have been greatly expanded.

The Executive would be a 3-person Board of County Commissioners (BOCC), nominated from districts and voted on by the citizens of the county at large. Later a provision was added to the constitution for the option of 5 commissioners in counties of over 70,000 population, and for a limited form of County Home Rule.

Also to be elected in each county: a Clerk and Recorder, Treasurer, Assessor, Coroner, Sheriff, Surveyor, and a Superintendent of Schools. In 1963, after consolidation of the many hundreds of local school districts in the state into 126, the office of county Superintendent of Schools was removed from the mandatory list and left to the discretion of the voters in each county. (Boulder does not have one.)

Originally BOCCs were granted very specific administrative and police powers: i.e. to sue and be sued; to deal in real property for the use of the county, and to acquire land sold for taxes; to assess and collect taxes for the operation of the county, and to collect monies assessed by towns, school and special districts and other taxing authorities within the county; to pass ordinances regulating liquor sales, bawdy houses and prostitutes; and "such other powers as may later be conferred by law."

As Colorado's population increased in the 1950's, 1960's and 1970's, especially along the Front Range and in certain resort areas, demand arose for urban services in the unincorporated areas of some counties. The General Assembly responded with additional duties and responsibilities for County Commissioners. New laws allowed them to appoint a County Manager, an Administrative Assistant to the BOCC, a County Budget Officer, or any other office deemed necessary for the efficient management of the county. BOCCs were given power to develop, operate and maintain mass transportation systems, except within the area served by the Regional Transportation District. They have the exclusive power to adopt a budget for all governmental activities of the county. A budget adopted by the BOCC is binding on all officers, departments, boards and personnel of the county.

The Commissioners are required by law to provide a suitable courthouse, sufficient jail and other buildings, and may acquire necessary land or buildings by eminent domain. They must care for the poor and may make regulations for the promotion of health and the suppression of disease, to control air pollution, to prevent and suppress riots, and to punish loiterers and prostitutes.

In 1963 BOCCs were authorized to "provide for the physical development of the unincorporated territory within the county and for the zoning of all, or any part of it." After 1971 BOCCs were required to appoint a Planning Commission of 3-9 members whose first duty would be to make and adopt a master plan. The General Assembly specifically stated that such a plan was not a prerequisite to a zoning resolution, but that a master plan was advisory only unless and until it was implemented by the adoption of zoning and subdivision regulations.

At about this time the state legislature encouraged organization of county housing authorities to provide housing for agricultural and low-income workers. A BOCC may appoint a housing authority upon receipt of a petition of 25 county residents.

In 1974 the state reorganized its delivery system for Social Services. BOCCs were required to set up a Department of Social Services, which must administer public assistance in the county under state rules regarding welfare, medical assistance and child protection. A county may also provide temporary assistance to transients and to poor who reside in the county. The BOCC shall establish guidelines for eligibility of recipients and may set minimum residency requirements--not to exceed 6 months--and require recipients to work or to take job training if under 65 and able.

The Commissioners may enter into contracts and agreements with other counties, the State of Colorado or any agency or political subdivision thereof.

As the legislature has over the years granted additional powers to the counties, the laws have continued to state in their opening paragraphs that these are powers granted to counties by the state for the convenient administration of the state government. Counties are not independent entities and possess only those powers expressly conferred upon them by the constitution and the statutes.

COUNTY HOME RULE

One of the most important efforts at modernizing county government in Colorado led to a constitutional amendment in 1970 permitting **structural** home rule. The amendment and the enabling legislation which followed in 1971 allowed a county to change its organizational structure according to local desires and not be bound by the structure outlined by the state. For example, some of the county offices which are now required to be elective (county clerk and recorder, treasurer, assessor) could be made appointive. The county would still have only the powers explicitly granted by the state.

Functional home rule, as opposed to structural home rule, gives the voters of a county the authority to define by charter the functions it may perform and the powers it may exercise, such as the power to enact taxes other than those specifically permitted by the state. Functional home rule is not available to Colorado counties.

The 1970 amendment aroused a great deal of citizen interest, but only two counties actually went so far as to reorganize as home rule counties: Weld County in 1975 and Pitkin County in 1978. In 1972, Boulder County held public hearings and appointed a committee to discuss the possibility of going home rule, but nothing came of it.

Weld County adopted a home rule charter in 1975. Its major provisions are:

I. Elected officials: Expanded County Commissioners from three to five; three elected from districts and two at-large. Term limited to two four-year terms. It added a body known as the County Council, five elected in the same manner as the County Commissioners, but on a non-partisan basis, limited to two four-year terms. Also elected are the Assessor, Clerk, Coroner, Sheriff, and Treasurer.

II. Appointed officials: County Attorney and all other department heads.

III. Duties of County Council: sets county officials' salaries, fills Commissioner vacancies, suspends and replaces elected officials facing recall, may appoint performance auditor. They are non-salaried.

IV. Initiative, Referendum, Recall. Reserved to the people of Weld County.

V. Tax limitation: Tax levies cannot exceed the amount of tax revenues generated in the preceding year plus 5%. No provision is made for growth in assessed value or increase in demand for county services. The County Council, however, may permit increases requested by the Board of County Commissioners up to a factor of the increased assessed value of property multiplied by the previous year's tax levy.

Pitkin County adopted a home rule charter in 1978. Pat Fallin, League member and former Aspen City Council member said that the main reason was limitations on salaries. At that time, all elected county officials' salaries were set by the state, and Aspen wanted to pay more in order to attract qualified people. The major provisions of its charter are:

I. Elected officials. Five County Commissioners, elected at-large from residential districts, for 4-year terms. Clerk and Recorder, Assessor, Sheriff, no terms of office stated.

II. Appointed officials: County Attorney, County Manager, Coroner, and Director of Finance (in lieu of Treasurer). Six boards and commissions.

III. Campaign Finance Rules: Contributions to county candidates limited to \$500 per person. Candidate/political committee spending limited to \$50 times total registered voters. No person may spend more than \$5000 to pass or defeat any ballot issue.

IV. Initiative, Referendum, Recall. These powers retained for the electorate.

V. Tax Limitation Amendment 1979. No increase in rate of any tax, nor may any tax be imposed, unless approved by a vote of the people.

It is interesting to note that both counties have instituted the initiative process and have limited taxes. Neither of these moves would have been possible without going home rule.

PROS AND CONS OF COUNTY HOME RULE

PRO: 1) Some county officials who must now be elected on a partisan ballot could be made appointive with required job qualifications and higher salaries. This could result in increased professionalism.

2) The Board of County Commissioners could be restructured and their number increased to ensure more voices in the decision-making process. Any combination of election at large or from districts could be instituted.

3) A county manager could more effectively function as the chief executive officer under home rule than under the present system.

4) The salaries of county officials could be set to meet the needs of the county, and not dictated by statute.

5) Home rule could provide for coordination of services and economies of scale.

CON: 1) Officials in key positions should be elected, and not appointed. Their record in office should be subject to public scrutiny, and cause for their rejection at the polls if necessary. In home rule counties Pitkin and Weld, most of the county officials are still elected separately, reflecting political considerations.

2) The present system of three commissioners works well; there is no need to change.

3) The commissioners could appoint a county manager without changing to county home rule.

4) Home rule would not grant the county commissioners any new powers. Since the amendment was enacted in 1970, the legislature has significantly broadened the authority of the county to legislate in matters of local concern, so home rule is a less attractive alternative than it was then.

5) The costs of county government could increase substantially--for higher salaries, and greater operating expenses for offices and support staff. This would be especially true if a professional county manager were employed.

INCREASING THE BOARD OF COUNTY COMMISSIONERS FROM THREE TO FIVE

Short of adopting a home rule charter, counties of over 70,000 population may choose by a vote of the people to enlarge the board of county commissioners from three to five. At the same time, the voters must decide on the method of election of the five county commissioners.

All five of the commissioners may be required to reside in designated districts. The only other option is for three of the commissioners to reside in districts and the other two to represent the county at large.

If the proposal requires the five to reside in districts, the voters must further decide whether they should be elected by the voters in each particular district or by the voters in the county as a whole. If the proposal is for three to reside in districts and two at large, then the voters must decide whether the three commissioners representing districts are to be voted on by the voters of the district or by the county at large.

There are, then, four possible combinations to be presented to the voters:

- 1) Three commissioners resident in districts and two at large, with all five elected by the county as a whole.
- 2) Three commissioners resident in districts and two at large, with the three commissioners resident in districts elected only by the voters in their district.
- 3) Five commissioners resident in districts, with all five elected by the whole county.
- 4) Five commissioners resident in districts, with all five elected only by the voters of their district. (This was the option in the 1986 and 1998 proposals.)

The statute complicates matters by requiring that "...a board of county commissioners may pass a resolution increasing its membership to five members and designating not fewer than two of the methods of election set forth in subsection (5) or (6) of this section." (The methods are the four options listed above.) The same requirement is made if the question is initiated by citizen petition.

In 1986 in Boulder County, the citizen-led effort to increase the number of commissioners ran head-on into an argument over the interpretation of this section.

Only **two** counties have so far availed themselves of this option. In 1976 the **El Paso** county commissioners placed the issue on the November ballot, stipulating that each of the five commissioners must be resident in and voted on by the members of the district. The proposal was approved by the voters. Much more recently, in 1994, the voters of **Arapahoe** County approved the change to a five-commissioner board. Their five commissioners are also elected from single-member districts.

In Boulder County, the question of enlarging the board of county commissioners to five has surfaced repeatedly. In 1975, several citizen groups (one was the local chapter of the National Organization for Women, and another was a group of Longmont realtors) approached the county commissioners to request that they initiate the change in time for the 1976 election. This did not occur. However, in 1978 the Boulder County Taxpayers Association led a successful petition drive to force the issue onto the ballot in the November election. To be on the safe side of the requirements of the statute, the petitioners listed all four of the possible methods of election.

The issue was defeated; but eight years later, in 1986, the same group led another petition drive. This time the election was set for April, and the choice was limited to the option of five commissioners, each resident in and elected by the voters in the district. The petitioners claimed that presenting all four options in 1978 had simply confused the voters. Again, the issue was defeated. The margin of defeat was more than two to one, but the turnout was extremely low.

More recently, in 1998, another citizen group appealed to the county commissioners to place on the ballot the question of increasing the number of commissioners to five, all five to be resident in and elected from districts. The commissioners declined to do so, and the subsequent petition drive fell short of the required number of signatures.

The 1986 petition was very nearly rejected on legal grounds. The county attorney argued that since the statute required that at least two of the four possible methods of election must be presented on the ballot, and the proponents presented only one, the petitions were invalid. The county commissioners, however, sensing the strong public interest in the issue, decided to waive that objection and placed the issue on the ballot anyway.

Any future such efforts must take this unresolved issue into account.

PROS AND CONS OF INCREASING THE NUMBER OF COMMISSIONERS TO FIVE

PRO: 1) With only three commissioners, important decisions are often made by only two people. With five, decisions would be made by at least three, and sometimes four or five.

2) Additional cost for five commissioners would be minimal. In 1998, proponents estimated the added cost would have been only about \$1 per citizen per year.

3) With five commissioners, there would be a greater chance of representing the diversity of interests and opinions in the non-urban areas of the county.

CON: 1) Increasing the number does not necessarily ensure greater diversity or better representation. Because of the "one man, one vote" requirement, heavily populated areas will still control the vote.

2) Since the county commissioners function as administrators, increasing their number to five would make carrying out these duties more difficult.

3) Added commissioners would cost the county substantially more for salaries, support staff, automobiles, office space, and equipment.

4) Since the cities are expanding and the unincorporated areas are shrinking, it is illogical to increase the number of commissioners.

PROS AND CONS OF ELECTING FROM DISTRICTS

PRO: 1) The diverse interests of different parts of the county would have a better chance of being fairly represented.

2) A commissioner elected by district vote is accountable only to voters within that district and therefore is more responsive to their particular concerns.

3) Countywide campaigns are more expensive and more time-consuming than running from a district. A candidate from a district would be able to spend less on media advertising and rely more on grass-roots contact with the voters.

CON: 1) An at-large election encourages each commissioner to keep in mind the interest of the whole county, rather than parochial concerns.

2) Each voter should have the chance to vote for all of the commissioners, not just one.

3) Districts must still be roughly equal in population, so heavily populated areas will still dominate.

REORGANIZATIONAL CHANGES POSSIBLE UNDER THE CURRENT SYSTEM

Concern has often been expressed in the past that the statutory organization of county government, with its plural executive in three county commissioners and its several separately elected department heads, results in inefficiency and fragmentation. To meet this concern, the commissioners have made various significant changes in the structure of county government. The trend has been toward reducing the number of department heads who report directly to the county commissioners. An organization chart in 1984 shows thirteen such departments; by 1986, there were ten; the 1998 chart shows six.

Many years ago, the division of the county into three road districts was of supreme importance. Each commissioner was in effect the head of a separate road district, with separate maintenance facilities and separate budgets for road repair and construction. Indeed, when the first woman county commissioner was elected in 1974, one of the most forceful arguments leveled against her candidacy was that she had never driven a road-grader!

Pressure built up from concerned citizens for the consolidation of the road districts as at least one step toward greater efficiency and economy. Following the contentious election of 1986, the road districts were consolidated.

The commissioners also established, in early 1987, a new department of administrative services, combining the functions of finance, purchasing, telecommunications, personnel, data processing, and risk management. These functions had been scattered among five different departments. It is fair to say that these reorganizations were not simply a reaction to the political winds of the time, as a move toward consolidation had been under way for at least two years. It is perhaps also fair to say that the "Drive for Five" accelerated the time table.

Many of the urbanized counties, especially those in the Denver metropolitan area, have created the position of county administrator, or county manager. This still runs into the limitations of fragmented authority, as the important departments of clerk and recorder, assessor, treasurer, sheriff, and coroner are still headed by independently elected officials.

PROS AND CONS OF A COUNTY MANAGER UNDER THE PRESENT SYSTEM

PRO: 1) A county manager could provide a more efficient administrative setup, with a possible reduction in the number of department heads.

2) Any corporation with a multi-million dollar budget needs a chief executive officer.

3) The commissioners would have more time to spend in policy-making and in contact with the citizens if a manager were handling day-to-day operations.

4) With three (or five) commissioners in the role of administrator, department heads could receive mixed messages. A county manager could coordinate administrative duties and give unified direction to the county staff.

CON: 1) A county manager could affect policy-making simply by having control of agendas and the budgeting process. The commissioners should not relinquish their policy-making responsibilities.

2) Adding a county manager would add substantially to the cost of county government, since the commissioners would still receive their full-time salaries as set by statute.

3) A manager's impact on streamlining the county government would be greatly limited because important departments like those of the clerk and recorder, treasurer, assessor, and sheriff would still be headed by elected officials.

4) The commissioners receive more direct input from department heads now than they would if information had to be filtered through a county manager.

FUTURE OF COUNTY GOVERNMENT

Among traditional counties in the U.S., there are three basic structures of government: 1) the commission, or "plural executive" form; 2) the commission/administrator form; and 3) the council/elected executive form. (The council/elected executive form is probably not available in Colorado without a constitutional amendment.) The majority of counties in the U.S. operate under either the commission or the commission/administrator structure.

Urban county governments which reach across city limits and beyond county lines (Dade County in Florida and Los Angeles County in California) are not possible in Colorado without a constitutional amendment.

Colorado did allow, at the same time as the county home rule amendment in 1970, the creation of regional service authorities, which could assume the provision of many services of a regional nature, such as water and sewer services, air quality control, and transportation. This option has never been exercised. There are, however, a number of single-purpose districts to which Boulder County now belongs: the Denver Regional Council of Governments, the Regional Transportation District, the Urban Drainage and Flood Control District, and the Boulder County Recycling and Composting Authority.

In 1999 there are 64 counties in Colorado. The city and county of Denver and the newly created city and county of Broomfield can be described as city-county consolidations, having been formed under the provisions of Article XX of the state constitution ("Home Rule Cities and Towns").

Most of Colorado's counties adhere to the pure commission form, but some of the more populous counties along the Front Range have moved to the commission/administrator form.

It should be noted that this commissioner/administrator structure is by no means parallel to the city council/city manager form of government. The county manager has no direct authority over the department heads who are separately elected, and must rely to a large extent on skills of communication and persuasion.

THE CITY AND COUNTY OF BROOMFIELD

An option available in Colorado is that of a city's becoming a county in its own right, as was shown by the creation of the City and County of Broomfield by a state-wide vote in the 1998 election. This option must, however, be initiated by a city rather than by a county itself. The new county was created by amending the state constitution to add several sections to Article XX: Home Rule Cities and Towns.

Article XX was added in 1902 in order to establish the City and County of Denver as a single entity, under the relatively new concept of home rule. As the history books have it, Denver citizens were chafing under the heavy-handed control over local decisions then being exercised by the state legislature.

The new city and county assumed the powers of both levels of government, and incorporated territory that had previously belonged to Arapahoe County (as it then existed). It also became its own judicial district and school district. For decades, each time that Denver annexed land, it removed that land from a neighboring county and also from the school district in which it had been located. Thus, each annexation eroded the tax base of the adjacent governments and nullified their efforts at long-range planning.

Eventually, in 1974, the citizens initiated and passed a constitutional amendment which required that each annexation had to be approved by a majority of the voters in the county from which the land was being removed, as well as of the voters in Denver itself.

From 1902 until 1998, no further attempt was made to extend the city and county concept to any other jurisdiction until Broomfield achieved independence last November.

Broomfield, it must be noted, lies in four counties and in six school districts, and the resultant fragmentation of governmental responsibility has been an ongoing frustration for its citizens. Broomfield voters in 1996 voted to consider placing a question on a statewide ballot that would amend the constitution to authorize the creation of a city and county.

A feasibility study recommended overall in favor of the concept. The Broomfield City Council could either persuade the state legislature to put the question before the voters state-wide, or could circulate petitions in order to get the issue on the ballot. During the debate in the legislature, the bill was modified so that the City and County of Broomfield would not have the freedom of annexation that a city enjoys; rather, any proposed annexation after the effective date of November 15, 2001, would have to be

approved by the voters of the county in which the territory lay as well as the voters in Broomfield itself. Also, there would be no consolidation of school districts, as there had been in Denver's case. The bill passed, and in November of 1998 the voters of the state approved the measure by a substantial majority.

No doubt the voters were moved by Broomfield's unique situation; yet already other urban areas are looking with interest on the ease with which Broomfield accomplished its goal.

The city of Aurora, which lies in two counties, looked seriously for several years at the possibility of becoming its own city and county. Since the successful Broomfield election, the city councils of Westminster and Arvada have entertained the idea of creating a joint urban city and county. Westada? Arminster? There is also interest in Pueblo.

Where might this lead? Will we see multiple city/county units of government along the Front Range, each one eroding the territory and tax base of the county to which it had originally belonged? What then will be the role of county government?